HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No.759 of 2006

Appellant Insurance		The Oriental Insurance Co. Ltd., Near Adarsh Bal Vidya Mandir, Dhamtari, District **Dhamtari** (CG)
	versus	
Respondents Claimant	1.	Smt. Durpati Bai, w/o Chhannu Lal Sinha, aged Not known, r/o Gram-Bhaindri, Tahsil-Kurud, District-**Dhamtari** (CG)
Driver	2.	Lalchand Chandrakar, s/o Raghunandan Chandrakar, r/o Gram-Bhainsmudi, P.S. Magarlod, District-**Dhamtari** (CG)
Owner	3.	Arjundas Sunderani, s/o Sadurmal Sunderani, r/o Ganjroad, Nayapara, Rajim, District-**Raipur** (CG)

Appeal u/s 173 of the Motor Vehicles Act

Miscellaneous Appeal No.760 of 2006

Appellant Insurance		The Oriental Insurance Co. Ltd., Near Adarsh Bal Vidya Mandir, Dhamtari, District **Dhamtari** (CG)
	versus	
Respondents Claimant	1.	Smt. Sohaga Bai, w/o Ubhaylal Sahu, aged 40 years, r/o Gram-Katalbod, Tahsil-Kurud, District- **Dhamtari** (CG)
Driver	2.	Lalchand Chandrakar, s/o Raghunandan Chandrakar, r/o Gram-Bhainsmudi, P.S. Magarlod, District-**Dhamtari** (CG)
Owner	3.	Arjundas Sunderani, s/o Sadurmal Sunderani, r/o Ganjroad, Nayapara, Rajim, District-**Raipur** (CG)

Appeal u/s 173 of the Motor Vehicles Act

Miscellaneous Appeal No.761 of 2006

Appellant Insurance		The Oriental Insurance Co. Ltd., Near Adarsh Bal Vidya Mandir, Dhamtari, District **Dhamtari** (CG)
	versus	
Respondents Claimant	1.	Smt. Pekan Bai, w/o Manrakhan Dewangan, aged 40 years, r/o Gram-Bhainsmundi, Tahsil-Kurud, District-**Dhamtari** (CG)
Driver	2.	Lalchand Chandrakar, s/o Raghunandan Chandrakar, r/o Gram-Bhainsmudi, P.S. Magarlod, District-**Dhamtari** (CG) .
Owner	3.	Arjundas Sunderani, s/o Sadurmal Sunderani, r/o Ganjroad, Nayapara, Rajim, District-**Raipur** (CG)

Appeal u/s 173 of the Motor Vehicles Act

Miscellaneous Appeal No.762 of 2006

Appellant Insurance		The Oriental Insurance Co. Ltd., Near Adarsh Bal Vidya Mandir, Dhamtari, District **Dhamtari** (CG)
	versus	
Respondents Claimant	1.	Dasruram Yadav, s/o Jangalram Yadav, r/o Kundel (Kareli), Tahsil-Kurud, District- **Dhamtari** (CG)
Driver	2.	Lalchand Chandrakar, s/o Raghunandan Chandrakar, r/o Gram-Bhainsmudi, P.S. Magarlod, District-**Dhamtari** (CG)
Owner	3.	Arjundas Sunderani, s/o Sadurmal Sunderani, r/o Ganjroad, Nayapara, Rajim, District-**Raipur** (CG)

Appeal u/s 173 of the Motor Vehicles Act

Present : Shri Abhishek Sinha with Shri Ghanshyam Patel, counsel for the appellant/insurance company.
No one appears for the respondents though served.

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ORAL ORDER

(Passed on 31st August, 2007)

Heard.

(2) This order shall govern Miscellaneous Appeals No.759/2006, 760/2006, 761/2006 and 762/2006.

(3) All the abovementioned miscellaneous appeals arise out of a common award dated 23-07-2005 passed by the Additional Motor Accidents Claims Tribunal, Dhamtari (henceforth 'the MACT') in Claim Cases No.148/2004, 145/2004, 149/2004 and 504/2004, whereby compensation has been awarded in all the four claim cases against the appellant/insurance company.

(4) It is not disputed in these appeals that the accident had occurred on 03-09-2003 after the policy issued on 21-07-2003 and expiring on 20-07-2004 was cancelled by the insurance company vide letter issued dated 11-08-2003 due to dishonour of the cheque issued by the insured on 01-08-2003. It appears from the record that the insurance company had served a notice on the owner of the vehicle under Order 12 Rule 2A of the Code of Civil Procedure for admitting the fact of cancellation of policy due to dishonour of cheque. It also appears that the owner of the offending vehicle did not file any reply to the notice under Order 12 Rule 2A of the Code of Civil Procedure, and therefore the fact that the cheque issued by the insured towards premium was dishonoured and the policy was cancelled by a letter dated 11-08-2003 by the insurance company must be deemed to be admitted in this case.

(5) In all the four appeals by the insurance company, Shri Abhishek Sinha with Shri Ghanshyam Patel, learned counsel for the appellant/insurance company made two-fold submission:

(i) That the policy of insurance having been cancelled prior to the date of accident due to the dishonour of the cheque of the amount of premium paid by the insured, the insurance company is not liable for payment of compensation.

(ii) It was urged that in view of the decision of this Court in ***National Insurance Company Limited*** vs. ***Rajendra Mourya and others***, Miscellaneous Appeal (C.) No.174/2007 dated 14-08-2007 if this Court comes to the conclusion that the insurance company is liable then the right to recover the amount of compensation paid by the insurance company from the owner of the vehicle should be granted.

(6) As regards the first submission, in ***Oriental Insurance Co. Ltd.*** vs. ***Inderjit Kaur and others***, **(1998) 1 SCC 371**, in similar circumstances, it was held that it was the appellant itself, who was responsible for its predicament. It had issued the policy of insurance upon receipt only of a cheque towards the premium in contravention of the provisions of Section 64VB of the Insurance Act, 1938. The public interest

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that a policy of insurance serves must, therefore, clearly prevail over the interest of the appellant. Therefore, in view of the provision contained in sub-section (1) of Section 149 of the Motor Vehicles Act, 1988 as regards the liability of the insurance company towards third parties is concerned, it is wholly immaterial whether the policy of insurance once issued by the insurance company was cancelled prior to or after the accident.

(7) The above decision has been relied on by this Court in ***National Insurance Company Limited*** vs. ***Rajendra Mourya and others*** (supra), which applies with full force to the facts of this case. The insurance company is, thus, liable to pay the amount of compensation. In view of the fact that the cheque for payment of premium issued by the insured was dishonoured, the right to recover the amount of compensation from the owner of the offending vehicle ought to have been granted to the insurance company. Accordingly, it is ordered that the insurance company shall deposit, if not already deposited, the amount of compensation awarded within a period of thirty days from today. The insurance company may initiate execution proceedings to recover the amount of compensation so deposited by it from the owner of the offending vehicle.

(8) Accordingly, all the four appeals are disposed of.

(9) A copy of this order be placed on record of the connected appeals and another copy be sent to the Additional Motor Accidents Claims Tribunal, Dhamtari along with the records of all the four claim cases.

Sd/-
Dilip Raosaheb Deshmukh
Judge